

UNIVERSITY OF CALIFORNIA - STANDARD PRACTICES

Section: 22 Labor Laws

Subject: 22.1 EEO Preaward Clearance

PURPOSE: The purpose of this standard practice (SP) is to define the procedure for obtaining an Equal Employment Opportunity (EEO) preaward clearance.

POLICY: The Laboratory and its subcontractors are required to comply with the United States Department of Labor (DOL) regulations relating to EEO and affirmative action (AA).

SCOPE: This SP applies to all subcontract actions when:

- The aggregate value of a transaction, including the estimated total value of a basic ordering agreement (BOA), is anticipated to total \$10 million or more;
- A modification causes the aggregate value of an existing subcontract to reach or exceed \$10 million; or
- New effort valued at \$10 million or more is added to an existing subcontract.

Exemptions The following actions do not require an EEO preaward clearance:

- Construction subcontracts of any value;
- Work to be performed outside the United States by employees who were not recruited within the U.S.; or
- Work to be performed on Native American land.

DEFINITIONS:

EEO Preaward Clearance An EEO preaward clearance ascertains the subcontractor's compliance with established DOL, EEO, and AA regulations on transactions subject to a preaward clearance.

Office of Federal Contract Compliance Programs (OFCCP) The OFCCP is a division of the DOL. The OFCCP performs all EEO preaward compliance reviews.

Transactions Transactions include subcontracts, modifications, and letter subcontracts when the definitive value is expected to be \$10 million or more, and basic ordering agreements when the anticipated value of all releases is \$10 million or more.

PROCEDURES:

Request for EEO Preaward Clearance An EEO preaward clearance must be requested, in writing, from the Department of Energy (DOE) on all transactions subject to a preaward clearance. DOE will forward the request for review to the OFCCP.

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Laboratory-Specific Instructions:

- At LLNL and LBNL the EEO preaward clearance request must be forwarded to DOE/OAK.
- At LANL the EEO preaward clearance request must be forwarded to DOE-LAAO.

The EEO preaward clearance request must include the following information:

- Name, address, telephone number, and point of contact of the prospective subcontractor;
- Name, address, telephone number, and point of contact of any corporate affiliate at which work will be performed;
- Description of the goods to be purchased or work to be performed;
- Name, address, telephone number, and point of contact for each proposed first-tier subcontractor that will receive a subcontract estimated at \$10 million or more;
- Anticipated award date of the subcontract;
- Subcontract number;
- Anticipated aggregate value of the subcontract and each first-tier subcontract having an estimated value of \$10 million or more;
- Place or places of performance of the subcontract and each first-tier subcontract having an estimated value of \$10 million or more; and
- Information regarding prior subcontracts awarded by the government or the Laboratory to the subcontractor and lower-tier subcontractors, including the places of performance and the estimated aggregate amount of subcontracts awarded before this date.

Sample EEO Clearance Request

See Exhibit 22.1a, *Example of Request for EEO Preaward Clearance*, for a sample request for EEO clearance.

Review Time

Requests for preaward clearances must be submitted to DOE at least 30 calendar days before the anticipated date of award of the proposed subcontract. If the EEO preaward clearance is not received within 30 calendar days, award of the subcontract must be withheld for an additional 15 calendar days or until clearance is received, whichever occurs first.

Exceptions

If the procedure described above would delay award of an urgent or critical subcontract, DOE may be solicited to request an

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expedited EEO preaward clearance from OFCCP.

If the OFCCP is unable to complete the EEO preaward clearance before the specified date of award, the necessary approval may be obtained by providing written justification for the award to DOE. After informing the OFCCP regional office, DOE may then approve the award without the preaward clearance; however, an EEO postaward review must then be requested.

EEO Postaward Review

A request for an EEO postaward review must be made to DOE using a procedure similar to the request for an EEO preaward clearance.

DOL Enforcement

If the EEO postaward review finds the subcontractor to be noncompliant, the subcontractor may be obligated to comply with EEO regulations or face any or all of the following:

- Possible debarment from future government contracts and Laboratory subcontracts until the subcontractor is in compliance;
- Cancellation, termination, or suspension of the subcontract in question;
- Publication of the subcontractor's name and its unions by the Secretary of Labor; and/or
- Referral by the OFCCP to the U.S. Department of Justice or the EEO Commission for the institution of appropriate civil or criminal proceedings.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist must:

- Request and obtain an EEO preaward clearance for all subcontracts falling within the scope of this SP; and
- Obtain an EEO post-award clearance when DOL is unable to complete a preaward clearance before a subcontract must be awarded.
- Include the *Preaward On-Site Equal Opportunity Compliance Review* clause (FAR 52.222-24) in solicitations, other than those for construction, when the aggregate amount of the subcontract is expected to be \$10 million or more.
- Include the *Equal Opportunity Preaward Clearance of Subcontracts* clause (FAR 52.222-28) in solicitations and subcontracts, except for those for construction, when the aggregate amount of the subcontract is expected to be \$10 million or more.

REFERENCES:

Prime Contract Clause 8.1 - Contractor Purchasing System